

Public Service Commission of West Virginia

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FCC Mail Room
Michael A. Albert
Chairman



September 10, 2015

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743
(overnight mail)

(Duplicate copy to:)
Marlene H. Dortch
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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Universal Service Administrative Company
Vice President, High Cost and Low Income Division
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: WC Docket No. 14-58, ETC Annual Reports and Certifications for
Eligible Telecommunications Carriers Pursuant to 47 C.F.R. §54.314

Pursuant to the requirements of 47 C.F.R. §54.314, The Public Service Commission of West Virginia (WVPSC) hereby certifies to the Federal Communications Commission (FCC) and the Universal Service Administrative Company that the telecommunications carriers included in this letter are eligible to receive federal high-cost or low income support for the program years cited.

Specifically, the WVPSC certifies for the carriers listed that all federal high-cost or low income support provided to such carriers within West Virginia was used during the preceding calendar year, 2014, and will be used in the coming calendar year, 2016,

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only for the provision, maintenance and upgrading of facilities and services for which the support is intended. 47 C.F.R. §54.314. The certified carriers include the following:

Carriers Certified to Receive Support

Carrier	SAC¹	Type²
American Broadband & Telecommunications Co.	209031	C
Armstrong Telephone Company - Northern Division	200267	I
Armstrong Telephone Company - West Virginia	200256	I
Boomerang Wireless, LLC	209030	C
Budget Prepay, Inc.	209029	C
Cellspan, Inc.	209033	C
Cintex Wireless, LLC	209018	C
Citizens Telecommunications Co. of West Virginia, Inc.	200271	I
Citizens Telecommunications Co. of West Virginia, Inc.	204338	I
Citizens Telecommunications Co. of West Virginia, Inc.	204339	I
Frontier West Virginia Inc.	205050	I
Gateway Telecom, LLC, dba StratusWave Communications, LLC	209001	C
Global Connection Inc. of America	209025	C
Hardy Telecommunications, Inc. (CLEC)	209009	C
Hardy Telecommunications, Inc. (ILEC)	200259	I
i-wireless, LLC	209022	C
Lumos Networks, LLC, fka FiberNet, LLC	209002	C

¹ Study Area Code

² I – Incumbent; C – Competitive

New Cingular Wireless PCS, LLC dba AT&T Mobility	209012	C
Nexus Communications, Inc.	209014	C
Q-Link Wireless, LLC	209028	C
Sage Telecom Communications, LLC	209034	C
Spruce Knob-Seneca Rocks Telephone, Inc.	200257	I
Tag Mobile, LLC	209026	C
Telrite Corporation	209016	C
Tempo Telecom, LLC	209032	C
TerraCom, Inc.	209017	C
Total Call Mobile, Inc.	209027	C
Tracfone Wireless, Inc.	209013	C
US Connect, LLC	209024	C
USCOC of Cumberland & Hardy Cellular Telephone, Inc.	209005	C
USCOC of Cumberland & Hardy Cellular Telephone, Inc. (Mobility Fund)	208001	C
Virgin Mobile USA, L.P.	209015	C
War Acquisition Corp., dba OTT Communications	200258	I
West Side Telecommunications	200277	I
West Virginia PCS Alliance, LC dba NTELOS	209909	C
West Virginia PCS Alliance, LC dba NTELOS (Mobility Fund)	208002	C

This certification is the product of formal proceedings before the WVPSC. General Investigation Regarding The Use of Federal Universal Service Funding By Eligible Telecommunications Carriers in West Virginia, Case No. 15-0528-T-GI (Recommended Decision Issued, August 17, 2015, Final September 6, 2015) (attached as

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Attachment A). In that proceeding, the WVPSC reviewed information filed by each carrier, including disclosures under 47 C.F.R. §54.313, to support this certification.

On behalf of the people of West Virginia, the WVPSC expresses its appreciation for the continuing efforts of the FCC in working to expand advanced telecommunications services throughout the nation.

Sincerely yours,

A handwritten signature in black ink, reading "Michael A. Albert". The signature is written in a cursive style with a large, stylized initial "M".

Michael A. Albert
Chairman

MJM/lrm
Enclosures

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Issued: August 17, 2015

FINAL
9/6/2015

CASE NO. 15-0528-T-GI

GENERAL INVESTIGATION REGARDING
THE USE OF FEDERAL UNIVERSAL SERVICE
FUNDING BY ELIGIBLE TELECOMMUNICATIONS
CARRIERS IN WEST VIRGINIA.

RECOMMENDED DECISION

Eligible telecommunications carriers (ETCs) in West Virginia are appropriately using federal universal service funds (USF).

BACKGROUND

On April 7, 2015, the Commission opened its annual general investigation into the proper use of USF by ETCs in West Virginia to provide information supporting the annual certification made to the Federal Communications Commission (FCC) under 47 C.F.R. §54.314. The Commission also referred this matter to its Division of Administrative Law Judges (ALJ) for a Recommended Decision on or before September 1, 2015.

On April 16, 2015, the presiding ALJ issued a Procedural Order directing ETCs to certify that they are properly using USF and file information required by the FCC under 47 C.F.R. §54.313. That Procedural Order also directed ETCs to file information to assist with a review conducted under Rule 10.6.c of the Rules for the Government of Telephone Utilities, 150 C.S.R. Series 6 (Telephone Rules). It required carriers to file the information on or before July 1, 2015. Finally, the Order directed the Executive Secretary to publish notice of this matter and inform the public that interested parties could file comments with the Commission by July 16, 2015.

The FCC previously directed states to annually certify carriers that are eligible for USF and file a certification letter stating that federal high-cost funds flowing to carriers in that state in the preceding and upcoming calendar year are used in accord with Section 254(e) of the Telecommunications Act of 1934 (as amended)¹ (Act). 47 U.S.C. §254(e),

¹ This statutory section states that federal USF received by ETCs must be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."

47 C.F.R. §54.314. See also, In the Matter of Connect America Fund, WC Docket 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (CAF Order). If a state commission timely files its certification with the FCC and the Administrator of the Universal Service Administrative Company (USAC), then USF for the next calendar year will be forwarded to the certified ETCs. Id. Therefore, the Commission initiated this general investigation regarding the certification of federal USF for ETCs in West Virginia for the preceding calendar year (2014) and the upcoming calendar year (2016). The FCC has also expressed an expectation that state commissions utilize data filed by ETCs under 47 C.F.R. §54.313 to conduct a rigorous examination of the use of USF. In the event that an ETC is not using USF support as intended, a state commission may recommend that the FCC make prospective support adjustments or recover past support amounts.² CAF Order at ¶612.

On May 11, 2015, Commission Staff filed an initial memorandum stating that it would tender a final recommendation as directed by the April 16, 2015 Procedural Order. Staff also requested that each ETC file a copy of its most recent FCC Form 555 to assist with its review.

Most ETCs subsequently filed USF certifications in response to the April 16, 2015 Procedural Order along with forms the FCC requires carriers to file with the Commission.

Certain carriers also requested that the Commission maintain a portion of their USF filings under seal, asserting that the sealed documents contain trade secrets exempt from the provisions of the West Virginia Freedom of Information Act, codified as W.Va. Code §§29B-1-1 to 7 (WV FOIA). The carriers requesting that the Commission continue to seal a portion of their filings in this matter include Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia (Citizens), Frontier West Virginia Inc. (Frontier WV), USCOC of Cumberland and Hardy Cellular Telephone, Inc. (US Cellular), New Cingular Wireless PCS, LLC dba AT&T Mobility (AT&T), Armstrong Telephone Company Northern Division (Armstrong Northern), Armstrong Telephone Company West Virginia Division (Armstrong WV), War Telephone Company, dba OTT Communications (War), West Virginia PCS Alliance dba NTELOS (NTELOS), Nexus Communications, Inc.³ (Nexus) and Spruce Knob Seneca Rocks Telephone, Inc. (SKSRT). Hardy Telecommunications, Inc. (Hardy) and West Side Telecommunications (West Side) also filed information under seal without a motion seeking protective treatment.

On July 22, 2015, Staff filed a memorandum recommending that the Commission certify most ETCs to the FCC as properly using USF based on responses carriers filed to the April 16, 2015 Procedural Order. Staff stated, however, that certain carriers either failed to respond to the April 16, 2015 Procedural Order or filed insufficient information.

² Alternatively, this Commission may rescind an ETC designation or refuse to certify the ETC.

³ Nexus subsequently withdrew its protective treatment request. (August 13, 2015 Letter.)

In response to the July 22, 2015 Staff Memorandum, the presiding ALJ directed the carriers Staff cited to comply with the April 16, 2015 Procedural Order forthwith. The Procedural Order also directed Staff to provide an updated recommendation to include carriers that belatedly provided adequate information to allow the Commission to certify their proper use of USF to the FCC. (July 28, 2015 Procedural Order.)

Subsequent to the July 28, 2015 Procedural Order, nearly all carriers Staff cited in its July 22, 2015 Memorandum responded to the April 16, 2015 Procedural Order. Three carriers, however, did not file the required affidavit with their responses.

On August 7, 2015, Staff filed a further memorandum to update its recommendation. Staff recommended that the Commission certify every ETC that responded to either the April 16, 2015 or July 28, 2014 Procedural Orders.

Specifically, Staff recommended that the Commission certify to the FCC and USAC that the following ETCs properly used USF in the prior calendar year and will continue to use USF properly in the coming calendar year:

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Budget Prepay, Inc.
6. Cellspan, Inc.
7. Cintex Wireless, LLC
8. Citizens Telecommunications Company of West Virginia, Inc.
9. Frontier West Virginia Inc.
10. Gateway Telecom, LLC, dba StratusWave Communications, LLC
11. Global Connection Inc. of America
12. Hardy Telecommunications, Inc. (CLEC)
13. Hardy Telecommunications, Inc. (ILEC)
14. i-wireless, LLC
15. Lumos Networks, LLC, fka FiberNet, LLC
16. New Cingular Wireless PCS, LLC dba AT&T Mobility
17. Nexus Communications, Inc.
18. Q-Link Wireless, LLC
19. Sage Telecom Communications, LLC
20. Spruce Knob-Seneca Rocks Telephone, Inc.
21. Tag Mobile, LLC
22. Telrite Corporation
23. Tempo Telecom, LLC
24. TerraCom, Inc.
25. Total Call Mobile, Inc.
26. Tracfone Wireless, Inc.
27. US Connect, LLC

28. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
29. Virgin Mobile USA, L.P.
30. War Acquisition Corp., dba OTT Communications
31. West Side Telecommunications
32. West Virginia PCS Alliance, LC dba NTELOS

Several carriers responded to aspects of the Staff memoranda. The responding carriers concurred with the Staff recommendation to certify their use of USF to the FCC, but disputed the Staff recommendation regarding the protective treatment requests.

On August 13, 2015, Nexus withdrew its protective treatment request.

No member of the general public filed comments in this proceeding after notice by publication in a newspaper of statewide circulation.

DISCUSSION

Use of Support Certification

With regard to the use of USF, it is reasonable to accept the Staff recommendation to certify that the thirty-two telecommunications carriers listed above are eligible to continue to receive federal universal service support. Each carrier has submitted data to the Commission supporting the Staff recommendation. That data enables the Commission to find that the support that the listed ETCs received in the preceding calendar year, 2014, and will use in the coming calendar year, 2016, is only applied to the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with the Act.

Therefore, the Commission will certify by letter to the FCC and USAC that the ETCs listed above are properly using USF consistent with Section 254(e) of the Act. Three carriers, however, have not filed an affidavit in support of their filings. Cintex Wireless, LLC (Cintex), Telrite Corporation (Telrite) and Tempo Telecom, LLC (Tempo) will file the missing affidavit within ten days of this Recommended Decision becoming a final Commission Order.⁴

Lifeline and Tel-Assistance Review

Under Telephone Rule 10.6, the Commission annually reviews the efforts of ETCs to participate in the Lifeline program and the state-based Tel-Assistance program. The

⁴ The Commission has previously stated that the filing of an affidavit attesting to the proper use of USF by an authorized officer of each ETC is an essential component of the annual review process underlying the certification this Commission makes to the FCC. See, General Investigation Regarding the Use of Federal Universal Service Funding by Eligible Telecommunications Carriers in West Virginia, Case No. 14-0566-T-GI (Commission Order, September 16, 2015) at 5.

filings demonstrate that ETCs are participating in one or both programs. ETCs should continue to participate in these programs and the Commission will continue to monitor these programs in future USF proceedings.

Requests for Protective Orders

Most ETCs did not request any type of protective order for their filings in this matter. Certain carriers, however, requested protective orders for portions of their initial or supplemental filings, arguing that the sealed information is exempt from disclosure under WV FOIA. The sealed filings in this matter include:

Carrier	Filings Under Seal
Armstrong Northern and Armstrong WV	Five year plans and maps attached to FCC Form 481.
AT&T	Service Improvement Plans and outage reporting.
Citizens and Frontier WV	Outage reporting, unfulfilled service requests and broadband pricing attached to FCC Form 481.
Hardy	CAF ICC data and Rate Floor data.
NTELOS	Portions of FCC Form 690.
SKSRT	Portions of attachments to FCC Form 481 and CAF ICC data.
US Cellular	Outages and unfulfilled service requests attached to FCC Form 481. Portion of FCC Form 690.
War	Portions of FCC Form 481 including its five-year plan, and CAF ICC data.
West Side	CAF ICC data.

Most carriers seeking protective treatment filed a motion and affidavit in support of their protective treatment requests. There is no need at present to make a final ruling on the pending protective treatment requests. Instead, it is reasonable to direct the Executive Secretary to continue to hold the unredacted versions of the sealed filings separate and apart from the remnant of this case file until the Commission receives and reviews a request for that information. West Side and Hardy, however, did not file a motion and affidavit supporting their protective treatment requests. These carriers will submit a proper protective treatment motion and supporting affidavit within ten days of this Recommended Decision becoming a final Commission Order. By deferring consideration of the protective treatment requests, the Commission is not taking any final position on the application of WV FOIA to the sealed data. Finally, Nexus withdrew its request for a protective order for its FCC Form 555. The Executive Secretary will release the sealed filing Nexus submitted into the public record, once this Recommended Decision becomes a final Commission Order.

Requirements for 2016 Certification Filings

In prior USF proceedings, the Commission directed all ETCs to file certain information with the Commission by July 1st of the following year to assure that it would have the necessary data available for the upcoming certification proceeding. The Commission will require similar filings on or before July 1, 2016. ETCs should (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481, FCC Form 690 (if applicable) and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

FINDINGS OF FACT

1. The Commission initiated this general investigation to review the use of federal USF by ETCs in West Virginia. (April 6, 2015 Commission Order.)
2. Thirty-two ETCs filed USF documentation and requested that this Commission certify that they have used federal USF support consistent with the Act in 2014 and will continue to do so in calendar year 2016. (ETC USF filings.)
3. Cintex, Telrite and Tempo failed to include an affidavit attesting to their proper use of USF, but did file FCC Form 481. (Id.)
4. Certain carriers requested that the Commission seal portions of their filings in this matter, asserting that the sealed data are exempt from WV FOIA. (Motions for Protective Order.)
5. Nexus withdrew its protective treatment request. (August 13, 2015 Filing.)
6. Staff recommended that the Commission certify to the FCC and USAC that all ETCs that responded to the April 16, 2015 or July 28, 2015 Procedural Orders previously used USF support consistent with the Act and will continue to do so in calendar year 2016. (July 22, 2015 and August 7, 2015 Staff Memoranda.)

CONCLUSIONS OF LAW

1. The thirty-two ETCs Staff recommended should be certified by letter to the FCC and USAC as eligible to continue to receive federal universal service support because they used that support in the prior calendar year only for the provision, maintenance and upgrading of facilities and services for which the support is intended and will continue to do so in the upcoming calendar year.

2. To facilitate certification filings for next year, it is reasonable to direct carriers to file information listed in the relevant discussion above with this Commission regardless of the opening of a new general investigation.

3. The Executive Secretary will continue to segregate the material subject to the protective treatment motions filed in this matter until the Commission receives and reviews a WV FOIA request for that information. (General Investigation Regarding the Use of Federal Universal Service Funding, Case No. 14-0566-T-GI (Commission Order, September 16, 2014)).

4. Cintex, Telrite and Tempo must file an affidavit attesting to their proper use of USF. (Id. at 5.)

5. Hardy and West Side must file a motion requesting protective treatment for their sealed filings within ten days of the Recommended Decision becoming a final Commission Order. (See, Rule 4.1.f of the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1.)

6. It is reasonable to release the FCC Form 555 Nexus filed under seal into the public record because it withdrew the request for a protective order.

ORDER

IT IS THEREFORE ORDERED that a certification be issued to the FCC and USAC, once this Recommended Decision becomes a final Commission Order, stating that the following carriers used federal high-cost and other universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the preceding calendar year and will do so in the coming calendar year:

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Budget Prepay, Inc.
6. Cellspan, Inc.
7. Cintex Wireless, LLC
8. Citizens Telecommunications Company of West Virginia, Inc.
9. Frontier West Virginia Inc.
10. Gateway Telecom, LLC, dba StratusWave Communications, LLC
11. Global Connection Inc. of America
12. Hardy Telecommunications, Inc. (CLEC)
13. Hardy Telecommunications, Inc. (ILEC)
14. i-wireless, LLC

15. Lumos Networks, LLC, fka FiberNet, LLC
16. New Cingular Wireless PCS, LLC dba AT&T Mobility
17. Nexus Communications, Inc.
18. Q-Link Wireless, LLC
19. Sage Telecom Communications, LLC
20. Spruce Knob-Seneca Rocks Telephone, Inc.
21. Tag Mobile, LLC
22. Telrite Corporation
23. Tempo Telecom, LLC
24. TerraCom, Inc.
25. Total Call Mobile, Inc.
26. Tracfone Wireless, Inc.
27. US Connect, LLC
28. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
29. Virgin Mobile USA, L.P.
30. War Acquisition Corp., dba OTT Communications
31. West Side Telecommunications
32. West Virginia PCS Alliance, LC dba NTELOS

IT IS FURTHER ORDERED that on or before July 1, 2016, all ETCs designated by this Commission to receive high-cost or other support shall (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481, FCC Form 690 (if applicable) and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

IT IS FURTHER ORDERED that the Executive Secretary shall docket a copy of the Commission letter to the FCC issued pursuant to this Order in this proceeding.

IT IS FURTHER ORDERED that the requests for protective orders filed in this matter are deferred until the filing of a request under WV FOIA. The Executive Secretary shall maintain the sealed responses separate and apart from the rest of the file pending further Order. If the Commission receives a request to inspect any of the sealed information, the Commission will afford the affected carrier a brief opportunity to respond to each WV FOIA request.

IT IS FURTHER ORDERED that the request from Nexus to withdraw its motion for a protective order is granted. The Executive Secretary shall release the sealed version of FCC Form 555 Nexus filed into the public file.

IT IS FURTHER ORDERED that Hardy and West Side file a proper motion supported by an affidavit requesting that the Commission issue a protective order for the data filed under seal in this matter within ten days of this Recommended Decision becoming a final Commission Order.

IT IS FURTHER ORDERED that Cintex, Telrite and Tempo each file an affidavit attesting to their proper use of USF consistent with the requirements of the Act within ten days of this Recommended Decision becoming a final Commission Order.


IT IS FURTHER ORDERED that on the effective date of this Recommended Decision, this matter is removed for the active docket of Commission cases.

The Executive Secretary is ordered to serve this Order upon the Commission and its Staff by hand delivery, upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by United States Certified Mail, return receipt requested.

Leave is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen days of the date of this Order. If exceptions are filed, the parties filing exceptions shall certify that all parties of record have been served the exceptions.

If no exceptions are filed, this Order shall become the Order of the Commission, without further action or order, five days following the expiration of the fifteen day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions by filing an appropriate petition in writing with the Executive Secretary. No such waiver, however, will be effective until approved by order of the Commission.


Matthew J. Minney
Deputy Chief Administrative Law Judge

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